HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. No.35 of 2004

M/s Jagdish Rice & Oil Mills and another

Versus

Central Bank of India and others

Post for orders on 2/08/2007

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. No.35 of 2004

APPLICANTS:

1. M/s Jagdish Rice and Oil Mills. A Proprietorship Firm through its Proprietor Shri Gir-raj Mahawar, Jeyopore Road, Jagdalpur, Distt. Bastar (C.G.).

2. Gir-raj Mahawar, S/o Late Khemchand Mahawar, aged about 32 years, Occupation Business, R/o Kumarpara, Jeyopore Road, Jagdalpur, Distt. Bastar (Chhattisgarh).

- Versus -

NON-APPLICANTS:

1. Central Bank of India, through its Manager, Choubey Colony, Raipur, District Raipur (C.G.)

2. Central Bank of India, through its Branch Manager, Jagdalpur, Branch Jagdalpur, Distt. Bastar (Chhattisgarh).

NON-APPLICANT: INTERVENER

3. Sushil Chand Pagariya, S/o Late Shri Mangilal Pagariya, aged about 44 years, R/o 3 Vivekanand Nagar Raipur (C.G.)

(Application for review of order dated 15-9-2003)

Present: -

Shri Manindra Shrivastava, Sr. Advocate
With Shri Sanjay K. Agrawal and
Shri Akhilesh Dalpati Advocates: — For the applicants.

Shri Prashant Mishra, Sr. Advocate
With Shri Varunendra Mishra, Adv.: — For non-applicants No.1 & 2.

Shri Kishore Bhaduri, Advocate: — For non-applicant No.3.

ORDER

(Passed on 2nd August, 2007)

L.C. BHADOO, J.

1. By this MCC the applicants have sought review of the order dated 15th September 2003 passed by this Court in Writ Petition No.2057 of 2003 whereby writ petition

filed by the applicants herein was dismissed on the ground that the applicants are not entitled for the benefit of one-time settlement scheme issued by the Reserve Bank of India dated 29-1-2003 (for short 'the scheme') and the order dated 20th May, 2003 passed by the Central Bank of India whereby the claim of the applicants seeking benefit of above scheme was rejected is not illegal.

2. The applicants have sought review of the order dated 15th September 2003 mainly on the following grounds:-

(i) That against the Debts Recovery Tribunal's order and recovery certificate dated 8-1-2001 an appeal was filed before the Debts Recovery Appellate Tribunal at Allahabad, which was not within the knowledge of applicant No.2, as the appeal was filed by the father of applicant No.2. The applicant No.2 took charge of the litigation only after sudden death of his father on 22-5-2003. Therefore, the applicants could not raise this point in W.P. No.2057/2003. As per the settled law, the appeal is continuation of the original proceedings. Since the appeal is still pending, recovery proceedings were not final, as such, the applicants are entitled for the benefit of RBI Scheme dated 29-1-2003.

(ii) That even after passing of the decree against the debtor by the DRT, respondent Bank has extended benefit of the scheme to certain persons. In the case of Premier Chemicals, a decree was passed on 9th August, 2000 (Annexure-A/7), in spite of that vide order dated 19-4-2001 the benefit of the scheme was extended to the Premier Chemicals, therefore, the applicants are also entitled for the said benefit which has wrongly been denied to them. This fact was not within the knowledge of the applicants, therefore, they could not bring on record in the writ petition.

3. Brief facts giving rise to filing of this review petition are that respondent No.2 herein granted a credit facility of Rs.25 lakhs to the applicants and sanctioned a term loan of Rs.10 lakhs for purchase of land & machinery and in lieu of that the applicants executed necessary documents in favour of the respondent Bank. In the year 1999, the applicants firm suffered certain proceedings by the State Authorities which resulted into the seizure of mill and ultimately, lead to stoppage of production in the rice mill and thereby the applicants failed to make repayment of loan as per the schedule. In spite of the assurance given by the Proprietor of the firm, respondent Bank moved an application under Section 19 of the Debts Recovery Tribunal Act, before the Debts Recovery Tribunal, Jabalpur, which was registered as O.A. No.237/2000. Ultimately, the Tribunal passed final order of recovery on 8-1-2001

ordering recovery of Rs.44,01,196/-. Thereafter, the respondent Bank moved an execution application before the DRT which was registered as O.A. No.7/2001. Against that order, a miscellaneous appeal was filed before the DRT, but the same was rejected vide order dated 5-9-2001, against which the applicants filed a writ petition before this Court which was registered as W.P. No.2108/2001, same was also dismissed on the ground that it was not maintainable. In the meanwhile, in the year 2003, Reserve Bank of India issued guidelines on 29-1-2003 and circulated the same to Chairman cum Managing Directors of all the Public Sector Banks including the respondent Bank, against that scheme the applicants herein filed an application for extending the benefit of the said scheme. Ultimately, after examining the case of the applicants, respondent No.2 Bank rejected the application vide order dated 20th May, 2003 mentioning therein that the case of the applicants is not covered under the scheme, against which a Writ Petition No.2057/2003 was filed before this Court, same was dismissed vide order dated 15th September 2003, against the said order, Special Leave to Appeal (Civil) No.18374/2003 was filed by the applicants before the Supreme Court of India, same was also dismissed by the Supreme Court vide order dated 27-2-2004.

4. I have heard learned counsel for the parties.

5. The relevant provisions of the Code of Civil Procedure in respect of review of the judgment or order passed by the Court are contained in Section 114 and Order 47 Rule 1 of the C.P.C., 1908. The provisions of Section 114 of the C.P.C. empowers a Court to review its order if the conditions precedents laid down therein are satisfied and that does not prescribe any condition on the power of the Court except those which are expressly provided in S.114 of the C.P.C. in terms whereof it is empowered to make such order as it thinks fit. However, Order 47, R.1 of the Code of Civil Procedure provides for filing an application for review. Such an application for review would be maintainable only (i) upon discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, (ii) on account of some mistake or error apparent on the face of the record, and (iii) for any other sufficient reason. Therefore, condition precedent for entertaining a review is that in the first instance, before filing a review conditions as envisaged in Section 114 read with Order 47 Rule 1 must be satisfied and thereafter the person who seeks review of judgment or order must establish the ground that after passing of the order or judgment, a new and important matter or evidence has been discovered, same he could not discover till the passing of the order, even after exercise of due diligence was not within his knowledge or could not

be produced by him or there is mistake or error apparent on the face of the record in the order of which review has been sought or for any other sufficient reason.

6. In numbers of cases, the above provisions of the C.P.C. came up before the Hon'ble Apex Court for their interpretation and one such matter is **Board of Control for Cricket, India and another V. Netaji Cricket Club and others** reported in **2005 AIR SCW 230** in which while interpreting the above provisions the Hon'ble Apex Court held that:-

> "Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in O.47, R.1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit.*"

7. In the matter of **Meera Bhanja V. Nirmala Kumari Choudhury** reported in **AIR 1995 SC 455** the Apex Court held that:-

> "It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in **Aribam Tuleshwar Sharma V. Aribam Pishak Sharma (AIR 1979 SC**

1047) speaking through Chinnappa Reddy, J. has made the following pertinent observations:-

'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.'"

8. In the light of above law in the matter of review, we have to examine the case of the applicants. As far as first ground is concerned, Shri Manindra Shrivastava, learned Senior Advocate, relying on the decision of the Apex Court in the matter of **LT. COL. S.K. KASHYAP AND ANOTHER Versus THE STATE OF RAJASTHAN** reported in **1971 (2) Supreme Court Cases 126** argued that the word 'pending' will ordinarily mean that the matter is not concluded and the Court which has cognizance of it can make an order on the matter in issue. He also placed reliance on the judgment of the Apex Court in the matter of **UNION OF INDIA AND OTHERS Versus ONKAR S. KANWAR AND OTHERS** reported in **(2002) 7 Supreme Court Cases 591** and argued that as long as appeal is pending proceedings are not final. There can be no two opinions about the proposition of law that where appeal is pending against any order, proceedings still continue, then finality cannot be attached to the proceedings.

9. But, in the present case, question involved is applicability of the scheme of 2003. Clause (c) of the scheme which was considered in the order dated 15th September 2003 envisages that "These guidelines will cover cases on which the banks have initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before Courts / DRTs / BIFR, subject to consent decree being obtained from the Courts / DRTs / BIFR." Therefore, in view of the above clause of the guidelines, it has to be seen whether if any appeal is pending against the order of DRT, the applicants were entitled for the benefit of the scheme. The objective of circular dated 29th January, 2003 was to provide a fast track channel for recovery of NPAs. In the case where decree has already been passed, the banks can straightway execute the same and recover the dues and, therefore, the said circular dated 29th January, 2003 does not cover the cases where decrees have already been passed. In the present case also, decree was already passed. Even recovery certificate was issued, therefore, it cannot be said that the matter was pending for final adjudication. Dues against the applicants were already settled by the DRT. Clause (c) of the scheme envisages that the matter pending before Courts / DRTs / BIFR shall also be covered subject to consent decree being obtained from the Courts / DRTs / BIFR. In the present case, decree was already passed, therefore, the matter was finalized. Looking to the provisions of the scheme, on account of pendency of the appeal before the Appellate Tribunal, the applicants cannot claim that they are entitled for the benefit of scheme.

10. In the matter of **X-CALIBRE KNIVES (P) LTD. AND ANOTHER Versus STATE BANK OF INDIA** reported in **(2005) 10 Supreme Court Cases 265** the above scheme came up for consideration before the Apex Court and the Court held that:

> "It is not in dispute that the Debts Recovery Tribunal has already passed an order on 31-1-2002 determining the sum payable by the appellant and, thereafter, issued a recovery certificate also by the time the matter was taken up for consideration in terms of the revised guidelines issued by Reserve Bank of India."

Therefore, the debtor was not entitled for the benefit of the said scheme. The guidelines were not applicable to cases where decrees/necessary orders have already been passed by the Tribunal. In view of the above judgment of the Apex Court also, the scheme is not applicable in the case of the applicants.

11. Even otherwise, the case of the applicants is that the matter was being dealt with by the father of the applicant No.2. However, he died on 22-5-2003. The applicant No.2 was not aware about the pendency of the appeal, therefore, he could not bring that fact on record in the writ petition. After the death of his father and decision by this Court, he came to know about filing of the appeal. In view of the pendency of the appeal, the applicants are entitled for the benefit of the scheme. The provisions of Order 47 Rule 1 of the C.P.C., extracted above, envisages in clear terms that review is maintainable only (i) upon discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, (ii) on account of some mistake or error apparent on the face of the record, and (iii) for any other sufficient reason. The applicants were required to bring on record that even after exercise of due diligence pendency of the appeal was not within their knowledge. Perusal of para-12 of the review petition reveals that the applicants have mentioned that pendency of the appeal was not known to the deponent who took charge of the litigation after sudden death of his father on 22-5-2003. Nothing has been mentioned in this review petition which shows that how and when the applicants came to know about the pendency of the appeal. The requirement of the provision is that even after "exercise of due diligence" it was not possible for the applicants to know about pendency of the appeal. Hence, the applicants were required to bring facts on record indicating diligence of the applicant No.2. Diligence means '*constant & earnest in effort and application; attentive and persistent in doing something.*' The applicants were required to bring facts on record that even after exercise of so much diligence it was not possible for the applicants to know about the pendency of the appeal. The applicants were required to place on record the circumstances that how and when the pendency of the appeal came to their notice. Therefore, it cannot be said that applicants exercised diligence in the matter. The parties are required to establish and place on record material which shows diligence. The applicant No.2 is the son. He was residing with his father. Their factory was sealed. Recovery proceedings were pending. How it can be inferred that it was not within the knowledge of the applicants about filing of the appeal. The power of review can be exercised only when party applied for review must have shown sufficient reason. The provision of Order 47 does not postulate a rehearing of the dispute. The parties are required to highlight all the aspects of the case or could perhaps have argued them more forcefully at the time of hearing of the main case.

12. In the matter of **Aribam Tuleshwar Sharma** (Supra) the Apex Court held that there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. Therefore, the applicant No.2 has failed to bring on record that even after exercise of due diligence he was not able to bring this fact on record, therefore, on this count also, this review petition is not maintainable.

13. As far as second ground is concerned, it is settled law that if any undeserving benefit has been extended to one person, other person cannot claim equality or equal protection as envisaged in Article 14 of the Constitution of India. As per the decision of the Apex Court in the matter of **X-CALIBRE KNIVES (P) LTD. AND ANOTHER** (Supra), where the Tribunal has passed an order determining the sum payable by the appellant and recovery certificate has already been issued, benefit of the scheme cannot be extended to such person. Even after passing of decree by the DRT against Premier Chemicals, Central Bank of India has extended benefit of the scheme to the Premier Chemicals, that does not mean that the applicants herein can ask for, as of right, for the similar benefit. When the benefit of the scheme cannot be extended to the applicant and same has wrongly been extended to some other party, the applicant as of right cannot claim benefit of the scheme. I am fortified in my view by the decision of the Apex Court in the matter of **Krishnasamy Reddiar Educational Trust Versus Member Secretary, National Council for Teacher Education and Another & connected matters** reported in **(2005) 4 Supreme Court Cases 89** in which the Apex Court held that once the action of the respondent was held to be legal and valid, even if an order was passed in favour of any other institution, the appellant could not invoke Article 14 of the Constitution of India. That was not the sweep of Article 14 of the Constitution.

14. Learned counsel for the applicants argued that there is a deviation provision in the scheme. In special cases, the Board is entitled to extend benefit of the scheme by deviating the provisions of the scheme.

15. This is a discretionary power vested with the Board. It is for the Board to consider the facts and circumstances of the case. If the Board reaches to the conclusion that if benefit of the scheme is given to the applicant, that will be in the interest of the

Bank/Board, then they can extend the benefit of one-time settlement scheme by deviating with the guidelines, but this is within sole discretion of the Board that too in the public interest i.e. in the interest of Bank. Only the Board can take decision on the issue. The Court cannot pass any order in this respect.

16. For the foregoing reasons, I am of the opinion that the applicants have not been able to make out a case for review of the impugned order. This review petition is without any merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

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